

Subsistence Management in Alaska: 1991 Update

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Introduction

Since December 1989, major changes have been occurring in subsistence management in Alaska. This has resulted from the state supreme court decision, McDowell v State. Several radical changes are taking place:

All Alaska residents now qualify for subsistence fishing and hunting on state lands. Previously, subsistence was open to rural residents only.

The federal government is beginning to take over management of subsistence on public lands. Previously, the state managed fishing and hunting on public lands.

New types of fisheries and hunts are being created by state and federal managers. These include state Tier II hunts, federal subsistence hunts, and new subsistence fisheries on the Kenai Peninsula.

This report briefly summarizes these rapid, ongoing changes. It describes subsistence management as it looked in late February 1991.

The 'New' State Law: 'Every Resident is a Subsistence User'

What is a subsistence user? There is now a discrepancy between how federal law and state law answers this question.

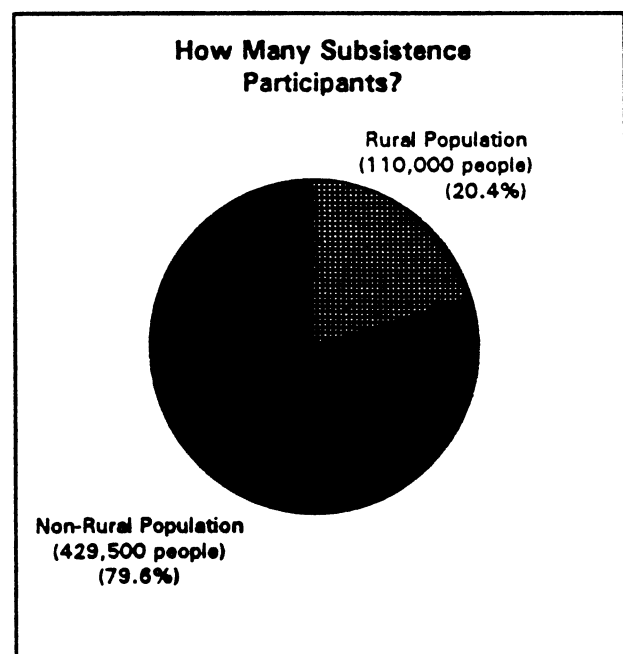
The federal subsistence law clearly states that only rural Alaska residents qualify for subsistence fishing and hunting on federal lands. Alaska residents living in urbanized areas can harvest under sport, personal use, or commercial regulations, but not under subsistence regulations. The rural provision is contained in the federal Alaska National Interest Lands Conservation Act, 1980 (called ANILCA).

Under the state's subsistence law (amended in 1986), only rural residents qualified for subsistence fishing and hunting. However, in December

1989, the Alaska Supreme Court ruled in McDowell v. State that the rural provision was not permissible under the Alaska Constitution. This means that now, every Alaska resident qualifies as a subsistence user on state lands. This also means that if the state Boards authorize a subsistence fishery or subsistence hunt anywhere on state lands, that all Alaskans now qualify to participate in it. It also means that fisheries and hunts near urbanized areas may become open to subsistence harvests.

The Federal Takeover on Public Lands

The unresolved discrepancy between federal law and state law has triggered a federal subsistence takeover on public lands. The federal government is required by law to take over management of subsistence on federal lands in Alaska if state law is out of compliance with federal law. Previously, the federal government allowed the state to manage subsistence on public lands, as long as the state had "laws of general applicability" similar to federal law.



The federal assumption of fish and game management on public lands is currently taking form. A new Federal Subsistence Board has been created with members from five federal land owners: U.S. Fish and Wildlife Service, Parks Service, Bureau of Land Management, Forest Service, and Bureau of Indian Affairs. The Federal Subsistence Board has begun to create temporary federal hunting and fishing regulations on public lands to provide for subsistence. The Federal Board is supported by staff within the various agencies. Final regulations will be created after an environmental impact assessment.

The federal management system apparently will exist alongside the state's management system. Fish and game is managed by the state through the Alaska Boards of Fisheries and Game. Under this dual federal and state management system, there will be two authorities making two sets of rules, applying to intertwined lands and overlapping resources, having different eligibility requirements, and using different technical support staff. Both state and federal boards will accept public proposals for regulation changes. How the state and federal functions will interact is uncertain.

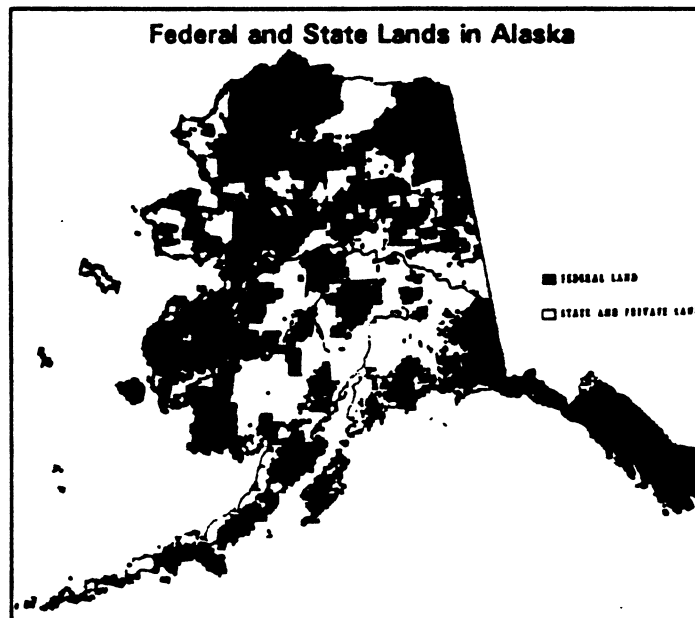
State and Federal Land: Where are the Boundaries?

One central question is where the new federal subsistence rules apply. Currently, federal subsistence rules are said to apply on public lands (federal lands), non-navigable waters on public lands, and unconveyed Native allotments. About 65 percent of Alaska is classified as public lands. State subsistence rules are said to apply on state land, private lands, Native corporation lands, conveyed Native allotments, marine waters within three miles from shore, and navigable waters whose subsurface is controlled by the state.

One difficulty for people is that boundaries between land classes are usually not marked on the ground in Alaska. Usable maps showing land class boundaries are generally unavailable. In many areas there is a patchwork of land classes. This means that people are uncertain where the rules apply. Also, this means that enforcement of rules is weakened because of their inherent ambiguity.

Which Resources are Covered?

Another central question is which wild resources fall under federal subsistence jurisdiction? Currently, federal subsistence jurisdiction is said to apply to wild resources on public lands, non-navigable waters on public lands, and unconveyed



Native allotments. State subsistence rules apply to wild resources on state lands, private lands, Native corporation lands, conveyed Native allotments, marine waters within three miles from shore, and navigable waters. Practically, this suggests that federal subsistence rules generally would not pertain to fish, because most subsistence fishing occurs in state-controlled navigable waters. Still, temporary federal subsistence fishing regulations have been created by the Federal Subsistence Board.

The "reach" of federal jurisdiction may be subject to legal interpretation in the near future. Federal regulation of marine mammal hunting under the Marine Mammal Protection Act is unaffected by these changes.

Impacts on Hunting and Fishing Regulations

Sweeping changes are beginning to occur in the way fishing and hunting is regulated following the McDowell decision. More changes can be expected in the near future. As of late February, 1991, these are some of the major effects.

Postponed Decisions

Because of the confusion in the laws, the state Board of Fisheries and Board of Game has been postponing making decisions about subsistence fishing and hunting. Many proposals from the public regarding subsistence fishing and hunting have been deferred by each Board until a clearer legal framework emerges. Some proposals have been postponed two meeting cycles.

Reduced Subsistence Seasons and Bags

Subsistence seasons and bag limits were reduced by the Board of Game in many areas in response to the McDowell decision. The Board reduced subsistence hunting seasons in 20 areas (primarily for moose or caribou), for an average of 15 days reduction per hunt (a state-wide total of about 290 lost hunting days). The Board reduced the subsistence bag limits for seven caribou hunts and four moose hunts. For instance, subsistence bags were reduced from 1 caribou during fall to 1 bull during fall in Unit 12 north of the Alaska Highway, 20B remainder, 20D, 20E accessible by the Taylor Highway, 20E remainder, and 25C North of the Tanana River.

These reductions were made in an emergency August 1990 meeting by the Board of Game. The reductions were primarily in response to large numbers of urban residents being classified as subsistence hunters. The reduced subsistence seasons and bags were meant to deal with increased hunting pressure from urban residents which might jeopardize the sustained yield of particular game populations.

Tier II State Subsistence Hunts

The state Board of Game created fifteen Tier II subsistence hunts during the emergency August 1990 session, due to the increased pressure from urban residents hunting under subsistence regulations. Tier II hunts are required by law when there are too many hunters for the resource. For these fifteen hunts, non-resident hunting was eliminated. Resident sport hunting was eliminated. Subsistence hunting was allocated to individuals hunters through a complex point system which measured the hunter's level of dependency and proximity to the game population.

There were nine moose hunts, two mountain goat hunts, three musk oxen hunts, and one caribou hunt placed under a tier II subsistence system in 1990. Proposals which may result in additional Tier II hunts are on the spring 1991 Game Board agenda, including many popular and heavily hunted areas near Anchorage, Fairbanks, and the Copper Basin.

New State Subsistence Fisheries

The state Board of Fisheries reestablished subsistence fisheries on Cook Inlet salmon stocks on the Kenai Peninsula. After the McDowell decision, the board could no longer limit subsistence fisheries to rural areas. The Kenaitze tribe and other groups had submitted proposals requesting reinstatement of these historic fisheries. Other areas are likely to receive new subsistence fisheries or see major changes in existing fisheries in the near future, including areas around Anchorage, Juneau, and Ketchikan.

Federal Subsistence Hunts and Fisheries

The federal Subsistence Board has created temporary subsistence hunting and fishing regulations for all areas of the state, applying to public lands, described above.

Federal Definitions of 'Rural Areas'

The federal Subsistence Board has developed a new definition of "rural area", the residents of which qualify for federal subsistence harvests on public lands. The definition is based on population size and other socioeconomic characteristics. While most federally-recognized rural areas are similar to those previously recognized as rural by the state, the federal Board recognized several new rural places, including Moose Pass, Cooper Landing, Ninilchik, Hope, and Delta Junction. In addition, the federal government initially rescinded a rural subsistence status from Sitka, Saxman, and Kodiak City; however, these decisions were reversed following protests from the communities. If the state is able to resume management under ANILCA, the federal definition will likely become the new standard for the state, as the state's definition of rural area (based on socioeconomic characteristics and not population size) was rejected by the federal court in the Kenaitze case.

State Fiscal Impacts

The federal takeover of subsistence management has had several fiscal impacts. The state Division of Subsistence and Division of Boards stand to lose federal reimbursement money for subsistence management, amounting to slightly less than \$1,000,000 annually. With the state presently out of compliance with ANILCA subsistence provisions, the federal government has not yet articulated a policy for continued funding for state programs. Some federal subsistence funds may be available to the Department of Fish and Game on a year-to-year contract basis, but no specific level of funding has been committed for FY 92.

The federal government has received \$6.5 million for their new subsistence management program. The functions funded by this money are now under development. The federal government is considering contracting particular subsistence management functions to some regional Native corporations.

The Department of Fish and Game has requested a budget increment of \$110,000 to fund new department responsibilities for assessing and implementing Tier II subsistence hunts. Additional state costs are likely to result from the need to coordinate with federal subsistence management groups.

A Time of Change

This is a period of major changes in the laws and regulations effecting subsistence uses in Alaska. This paper lists certain changes that had occurred up to February 1991. Because of this dynamic period, other changes may be expected in the near term. For information about current laws and regulations, the public should contact the Alaska Department of Fish and Game, or the U.S. Fish and Wildlife Service.